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SENATE BILL 412

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

ROMAN M MAES III

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ACCOUNTING FOR PUBLIC ASSISTANCE BENEFIT CARDS IN THE REMOTE FINANCIAL SERVICE UNIT ACT; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-16-3 NMSA 1978 (being Laws 1990, Chapter 123, Section 3, as amended) is amended to read:

"58-16-3. DEFINITIONS. --

A. As used in the Remote Financial Service Unit Act:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution, or with an agency or department of the state, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share draft, public assistance benefit or other consumer or asset accounts or pre-authorized credit card accounts;

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1                   (2) "account transfer" means a transaction that  
2 enables movement of funds by a cardholder from one account to  
3 another account within the same financial institution;

4                   (3) "acquirer" means the intercept processor  
5 that acquires financial data relating to a transaction from a  
6 card acceptor or a merchant and puts the data into a network  
7 system and means "agent acquirer" unless specifically indicated  
8 otherwise;

9                   (4) "agent acquirer" means any financial  
10 institution acting as an authorized agent of the acquirer in  
11 enabling financial data relating to a POS transaction to be  
12 acquired by the acquirer from a card acceptor or merchant and  
13 means "acquirer" unless specifically indicated otherwise;

14                   (5) "ATM transaction" means any one or more of  
15 the following transactions undertaken at an automated teller  
16 machine (ATM):

- 17                               (a) a cash advance from an account;
- 18                               (b) a cash advance from an authorized  
19 line of credit;
- 20                               (c) a deposit to an account;
- 21                               (d) a balance inquiry;
- 22                               (e) an account transfer; and
- 23                               (f) a normal financial transaction for a  
24 cardholder involving the issuance of non-cash or cash-equivalent  
25 items; provided, however, that normal financial transactions at

1 an ATM will expressly exclude any POS transaction;

2 (6) "authorization" means the issuance of  
3 approval, by or on behalf of the financial institution holding  
4 the cardholder's account, to complete a transaction initiated or  
5 authorized by the cardholder;

6 (7) "automated teller machine" or "ATM" means  
7 an unmanned device that is activated by the cardholder through a  
8 specially prepared card or by the transmission of a code via a  
9 keyboard or keyset or both and is capable of one or more of the  
10 following transactions:

11 (a) dispensing cash to any cardholder  
12 from an account or against a preauthorized line of credit;

13 (b) accepting deposits;

14 (c) account transfers;

15 (d) satisfying a balance inquiry in the  
16 cardholder's account or accounts; and

17 (e) conducting normal financial  
18 transactions involving the issuance of non-cash or  
19 cash-equivalent items; provided, however, that normal financial  
20 transactions at an ATM will expressly exclude a transaction that  
21 can only be initiated and completed at a POS terminal;

22 (8) "balance inquiry" means a transaction that  
23 permits a cardholder to obtain the current balance of the  
24 cardholder's account or accounts;

25 (9) "card" means a plastic card or other

1 instrument or any other access device issued by a financial  
2 institution or by an agency or department of the state to a  
3 cardholder that enables the cardholder to have access to and  
4 that processes transactions against one or more accounts, and  
5 the term shall be used when referring either to an ATM access  
6 card, an EBT card, a debit card or a credit card identifying a  
7 cardholder who has established a pre-approved credit line or  
8 public assistance benefit with the issuer of the credit card or  
9 EBT card;

10 (10) "card acceptor" means the party accepting  
11 the card and presenting transaction data to an acquirer;

12 (11) "cardholder" means a person to whom a card  
13 has been issued by a financial institution or who is authorized  
14 to use the card;

15 (12) "cash advance" means any transaction  
16 resulting in a cardholder receiving cash, whether initiated  
17 through an ATM or a POS terminal;

18 (13) "chargeback" means the credit of all or a  
19 portion of an amount previously posted to a cardholder's  
20 account;

21 (14) "clearing account" means an account or  
22 several accounts maintained for the purpose of settlement and  
23 payment of fees to the network manager;

24 (15) "credit" means a claim for funds by the  
25 cardholder for the credit of the cardholder's account and

1 provides details of funds acknowledged as payable by the  
2 acquirer or card acceptor to the issuer for credit to the  
3 cardholder's account;

4 (16) "credit card cash advance" means a cash  
5 loan obtained by a cardholder against a pre-authorized line of  
6 credit through presentation of a card;

7 (17) "data interchange" means the exchange of  
8 transaction data, authorization requests, transaction records or  
9 other data between intercept processors and acquirers and  
10 issuers through a shared system or network;

11 (18) "debit" means a transaction initiated by a  
12 cardholder that results in the debit to the cardholder's  
13 account, through use of a card or otherwise, and results in a  
14 claim for funds made by the acquirer or card acceptor against  
15 the issuer;

16 (19) "director" means the director of the  
17 financial institutions division of the regulation and licensing  
18 department;

19 (20) "electronic benefit transfer" or "EBT"  
20 means a system administered by an agency or department of the  
21 state designed to provide a public assistance or other benefit  
22 of monetary value provided by any department or agency of the  
23 state through POS terminals;

24 (21) "electronic benefit transfer card" or "EBT  
25 card" means a plastic card or other instrument or any other

1 access device issued by an agency or department of the state to  
2 a cardholder that enables the cardholder to have access to and  
3 that processes transactions against one or more public  
4 assistance or other benefits accounts;

5 [~~(20)~~] (22) "electronic funds transfer" or  
6 "EFT" means a system designed to facilitate the exchange of  
7 monetary value via electronic media utilizing electronic or  
8 mechanical signals or impulses or a combination of electronic or  
9 mechanical impulses and audio, radio or microwave transmissions;

10 [~~(21)~~] (23) "financial institution" means an  
11 insured state or national bank, a state or federal savings and  
12 loan association or savings bank, a state or federal credit  
13 union or authorized branches of each of the foregoing;

14 [~~(22)~~] (24) "in-state financial [~~institutions~~]  
15 institution" means a financial institution authorized to engage  
16 in and engaged in business in New Mexico and having its main  
17 office or a staffed branch within the state;

18 [~~(23)~~] (25) "intercept processor" means any  
19 electronic data processor operating for a financial institution  
20 that passes transactions;

21 [~~(24)~~] (26) "issuer" means a financial  
22 institution that issues cards or accepts transactions for a  
23 card, is the acceptor of a transaction and is typically, but not  
24 always, the entity that maintains the account relationship with  
25 the cardholder;

1                    [~~(25)~~] (27) "lobby or teller-line ATM" means  
2 any ATM located within the lobby of a financial institution or  
3 in its teller line, access to which is available only during  
4 regular banking hours;

5                    [~~(26)~~] (28) "merchant" means a seller of goods  
6 or services, retailer or other person who, pursuant to an  
7 agreement with a financial institution, agrees to accept or  
8 causes its outlets to accept cards for EFT transactions when  
9 properly presented, is usually a card acceptor and is a seller  
10 of goods and services who is regularly and principally engaged  
11 in the business of selling, leasing or renting goods, selling or  
12 leasing services for any purpose or selling insurance, whether  
13 the business is a wholesale or retail business and whether the  
14 goods or services are for business, agricultural, personal,  
15 family or household purposes. "Merchant" includes a  
16 professional licensed by the state of New Mexico, but does not  
17 include financial institutions;

18                    [~~(27)~~] (29) "modem" is a contraction of  
19 "modulator-demodulator" and means a functional unit that enables  
20 digital data to be transmitted over analog transmission  
21 facilities such as telephone lines, radio or microwave  
22 transmissi ons;

23                    [~~(28)~~] (30) "network" means a computer-operated  
24 system of transmitting items and messages between ATM or POS  
25 terminals, intercept processor and financial institutions, and

1 settling transactions between financial institutions, and  
2 includes without limitation, ATMs, POS terminals, all related  
3 computer hardware and software, modems, logos and service marks;

4 [~~(29)~~] (31) "network manager" means the person  
5 managing the business of a network;

6 [~~(30)~~] (32) "off-line" means not on-line;

7 [~~(31)~~] (33) "off-premise ATM" means ATMs  
8 installed away from the building or lobby of a financial  
9 institution by a distance of not less than five hundred feet;

10 [~~(32)~~] (34) "on-line" means a system in which  
11 all input data enters the computer at a financial institution,  
12 an intercept processor or the network from its point of origin  
13 and that is capable of transmitting information back to the  
14 point of origin after all input data is processed;

15 [~~(33)~~] (35) "on-premise ATM" means an ATM that  
16 stands in or immediately adjacent to the financial institution's  
17 building, such as in the financial institution's lobby, through  
18 the wall or a drive-up ATM within five hundred feet of the  
19 financial institution's building;

20 [~~(34)~~] (36) "person" means an individual,  
21 partnership, joint venture, corporation or other legal entity  
22 however organized;

23 [~~(35)~~] (37) "personal identification number" or  
24 "PIN" means a series of numbers or letters selected for or by  
25 the cardholder and used by the cardholder as a code or password

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1 in conjunction with a card to perform a transaction;  
2 [~~(36)~~] (38) "point-of-sale terminal" or "POS  
3 terminal" means an information processing device or machine,  
4 located upon the premises occupied by one or more merchants,  
5 through which transaction messages are initiated and  
6 electronically transmitted to an acquirer to effectuate a POS  
7 transaction and that accepts debit cards, [~~and~~] credit cards and  
8 EBT cards;

9 [~~(37)~~] (39) "POS transaction" means any of the  
10 following transactions undertaken at a POS terminal:

11 (a) purchases;  
12 (b) purchases that include cash back to  
13 the cardholder;

14 (c) cash advances at POS terminals;

15 (d) receipt of a public assistance

16 benefit at POS terminals;

17 [~~(d)~~] (e) returned item transaction  
18 message resulting in a credit to the cardholder's account;

19 [~~(e)~~] (f) a credit;

20 [~~(f)~~] (g) an authorization;

21 [~~(g)~~] (h) chargebacks at POS terminals;

22 [~~(h)~~] (i) card verification whereby the  
23 validity of a card is determined at POS terminals;

24 [~~(i)~~] (j) balance inquiries at POS  
25 terminals; and



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1 (b) for the purposes of the Remote  
2 Financial Service Unit Act, if the transaction is a POS  
3 transaction, the receipt shall contain, at a minimum: 1) the  
4 date of the POS transaction; 2) the amount of the POS  
5 transaction, if any; 3) the account number; 4) the type of  
6 account accessed; 5) the merchant's name and location; and  
7 6) the type of POS transaction completed;

8 [~~(40)~~] (43) "remote financial service unit"  
9 means a POS terminal or an ATM;

10 [~~(41)~~] (44) "returned item transaction message"  
11 means a credit message generated by the acquirer or by the  
12 merchant that returns the value of the returned item to the  
13 cardholder's account;

14 [~~(42)~~] (45) "settlement" means the process by  
15 which funds are transferred between financial institutions,  
16 intercept processors or networks in the flow of a transaction or  
17 in the payment of fees associated with the transaction;

18 [~~(43)~~] (46) "shared ATM or POS terminals" means  
19 ATM or POS terminals that are shared among financial  
20 institutions by formal agreement for the purposes of cardholder  
21 convenience, reduction of capital investment and marketing  
22 advantage;

23 [~~(44)~~] (47) "single subscriber terminal" means  
24 any terminal or set of terminals used to connect a single  
25 customer of a financial institution to [~~its~~] his financial

1 institution through which EFT messages are sent and completed,  
2 other than transactions;

3 [~~(45)~~] (48) "switch" means a routing mechanism  
4 and any device attached thereto that is necessary for the  
5 processing of a transaction used to communicate information and  
6 transactions among participating financial institutions or their  
7 intercept processors in a shared system or network;

8 [~~(46)~~] (49) "transaction" means a collection of  
9 electronic messages concluded by:

10 (a) a debit to or a credit from an  
11 account;

12 (b) a balance inquiry;

13 (c) the consummation of a normal  
14 financial transaction; or

15 (d) a rejected attempt of any one of  
16 those matters provided in Subparagraphs (a) through (c) of this  
17 paragraph;

18 [~~(47)~~] (50) "unauthorized use of the card of  
19 another" means the utilization of the card in or through a  
20 remote financial service unit to affect the balance of or obtain  
21 information concerning the account of the cardholder by a person  
22 other than the cardholder, which person does not have the  
23 permission of the cardholder for such use; and

24 [~~(48)~~] (51) "unauthorized withdrawal from the  
25 account of another" means the debiting of or removal of funds

1 from a cardholder's account, accomplished by means of the  
2 utilization of a remote financial service unit by a person other  
3 than the cardholder, which person does not have actual, implied  
4 or apparent authority for the debiting or removal and from which  
5 debiting or removal the cardholder receives no benefit.

6 B. [~~(1)~~] Any of the information provided pursuant to  
7 Subparagraphs (a) and (b) of Paragraph [~~(39)~~] (42) of Subsection  
8 A of this section may be provided using codes, numbers or other  
9 uniform explanations so long as they are explained elsewhere on  
10 the receipt.

11 [~~(2)~~] C. No receipt shall be required in any  
12 transaction involving a negotiable instrument that will itself  
13 become a receipt.

14 [~~(3)~~] D. Any term used in the Remote Financial  
15 Service Unit Act but not specifically defined shall have the  
16 meaning given to that term by the Uniform Commercial Code. "